

ENGROSSED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 254

(By Senators Cole (Mr. President)
and Kessler,
By Request of the Executive)

[Originating in the Committee
on Pensions;
reported February 27, 2015.]

A BILL to amend and reenact §5H-1-1 and §5H-1-2 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act; clarifying process for payment of survivor benefit; defining terms; limiting eligibility for survivor benefit to beneficiaries designated in writing by applicable public safety officer; clarifying circumstances for eligibility of survivor benefit; transferring responsibility for

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determination of eligibility for survivor benefit from Governor's office to Department of Military Affairs and Public Safety, Office of the Secretary; setting forth required information for certified request for survivor benefit; requiring fire, emergency medical service and law-enforcement programs to provide notice of survivor benefit and obtain written designations of beneficiaries from eligible public safety officers; requiring Department of Military Affairs and Public Safety, Office of the Secretary, to prepare a form for written designation of beneficiary; providing exclusions for availability of survivor benefit; providing that payments for survivor benefit be made from general revenue; and authorizing the Department of Military Affairs and Public Safety, Office of the Secretary, to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That §5H-1-1 and §5H-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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ARTICLE 1. WEST VIRGINIA FIRE, EMS AND
LAW-ENFORCEMENT OFFICER
SURVIVOR BENEFIT ACT.

§5H-1-1. Title and legislative intent.

1 (a) This article is known as the West Virginia Fire, EMS
2 and Law-Enforcement Officer Survivor Benefit Act.

3 (b) It is the intent of the Legislature to provide for the
4 payment of death benefits to the ~~surviving spouse~~, designated
5 beneficiary, ~~children or parents~~ or beneficiaries of firefighters, EMS
6 emergency medical service providers and law-enforcement
7 personnel killed in the ~~performance of their duties~~ line of duty.

8 §5H-1-2. Death benefit for survivors.

9 (a) For purposes of this article:

10 (1) “Killed in the line of duty” means the death of a public
11 safety officer as a result of an incident, accident or violence causing
12 death or injuries which are the direct and proximate cause of death
13 and occurring in the performance of his or her official duties,
14 including, but not limited to, training, administration meetings, fire,
15 emergency medical service or law-enforcement incidents, service

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1 calls, apparatus, equipment or station maintenance.

2 (2) “Office” means the Department of Military Affairs and
3 Public Safety, Office of the Secretary.

4 (3) “Public safety officer” means a firefighter, emergency
5 medical services provider or law-enforcement personnel employed
6 by or providing volunteer services to any fire, emergency medical
7 services or law-enforcement program certified by the State of West
8 Virginia.

9 (b) When a public safety officer is killed in the line of duty,
10 a claim may be submitted to the office for determination of
11 eligibility for the survivor benefit provided under this article. If the
12 claim is determined to be eligible, a total sum of \$100,000 shall be
13 paid to the designated beneficiary or beneficiaries of such public
14 safety officer, as provided in this section.

15 (c) (1) All claims for compensation under this article shall
16 be submitted to the office in the form of a certified request by the
17 chief of the applicable fire, emergency medical services or
18 law-enforcement program. Any such claims not submitted within
19 one year of the date of death are not eligible for the survivor

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1 benefit.

2 (2) The certified request for the survivor benefit shall
3 include:

4 (i) The name of the certified fire, emergency medical
5 services or law-enforcement program;

6 (ii) The name of the deceased public safety officer;

7 (iii) The name and address of the designated beneficiary or
8 beneficiaries of the survivor benefit;

9 (iv) The documentation set forth in subsection (e) of this
10 section evidencing that the designated beneficiary is or beneficiaries
11 are the eligible recipient or recipients, respectively, of the survivor
12 benefit; and

13 (v) Documentation setting forth the circumstances that
14 qualify the designated beneficiary or beneficiaries of the deceased
15 public safety officer for the survivor benefit.

16 (3) Upon receipt of the certified request, the office shall
17 review the request and make a determination of the eligibility of the
18 designated beneficiary or beneficiaries of the deceased public safety
19 officer for the survivor benefit. If it is determined that the claim is

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1 eligible, the office shall pay to the fire, emergency medical services
2 or law-enforcement program the total sum of \$100,000 in the name
3 of the designated beneficiary or beneficiaries of the survivor
4 benefit. Within fourteen calendar days of receipt of such sum, the
5 fire, emergency medical services or law-enforcement program shall
6 pay the sum as a benefit to the designated beneficiary or
7 beneficiaries.

8 (d) The sum payable under this article shall be paid in
9 accordance with subdivision (3), subsection (c) of this section to the
10 beneficiary or beneficiaries previously designated in writing by the
11 public safety officer pursuant to subsection (e) of this section. In
12 the event a minor is a designated beneficiary, the sum shall be paid
13 to the guardian, custodian or trustee of the minor for the benefit of
14 such minor.

15 (e) Each fire, emergency medical services and
16 law-enforcement program employing public safety officers shall
17 provide notice of this benefit and obtain a written designation of
18 beneficiary or beneficiaries from each public safety officer on a
19 form created by the office, to be maintained in the public safety

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1 officer's personnel file. The form shall require each public safety
2 officer to allocate the percentage of the sum payable under this
3 article to each designated beneficiary in the event multiple
4 beneficiaries are designated.

5 (f) A survivor benefit payment may not be made under this
6 article if any of the following apply:

7 (1) The death or injury that resulted in death was caused by
8 the intentional misconduct of the public safety officer.

9 (2) The public safety officer was voluntarily drugged or
10 intoxicated at the time the death or injury resulting in death
11 occurred.

12 (3) The public safety officer was performing his or her
13 duties in a grossly negligent manner at the time the death or injury
14 resulting in death occurred.

15 (4) The death or injury resulting in death was the direct and
16 proximate result of the actions of an individual to whom payment
17 would be made under this act: *Provided*, That in the event the
18 public safety officer designated more than one beneficiary, payment
19 may be made to the designated beneficiaries not taking actions that

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1 are the direct and proximate cause of such death or injury resulting
2 in death.

3 (g) Payments made under this article shall be made out of
4 the State Treasury, General Revenue Fund.

5 (h) The office shall propose rules for legislative approval in
6 accordance with the provisions of article three, chapter twenty-nine-
7 a of this code to carry out the provisions of this section.